

EXHIBIT D

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF MANAGED HEALTH CARE

File No. 933 0500
Material Modification No. 20232846
Order No. 20232846

Licensee: Prospect Health Plan, Inc.

ORDER
APPROVING NOTICE OF MATERIAL MODIFICATION

Pursuant to Health and Safety Code section 1352(b), the terms of the Notice of Material Modification filed on June 23, 2023, requesting approval of Licensee's proposal for a change of control, are approved as of the date set forth below.

This Order supersedes the Order issued on July 20, 2023, and shall remain in effect until revoked or superseded by further Order of the Director.

Dated: April 18, 2024
Sacramento, California



MARY WATANABE
Director
Department of Managed Health Care

By _____
JENNY MAE PHILLIPS
Deputy Director, Office of Plan Licensing

A handwritten signature in black ink that reads "Jenny Phillips".



Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814
Phone: 916-324-8176 | Fax: 916-255-5241
www.HealthHelp.ca.gov

April 18, 2024

VIA ELECTRONIC MAIL

Ms. Crystal Lautrup
Co-General Counsel
Prospect Health Plan, Inc.
600 City Parkway West, 10th Floor
Orange, CA 92868

Re: Notice of Material Modification Proposing Change of Control
Filed ; Filing No. 20232846

Dear Ms. Lautrup:

Enclosed is Order No. 20232846 issued by the Department of Managed Health Care (Department) approving the terms of the above-referenced Notice of Material Modification (Notice) filed by Prospect Health Plan, Inc. (Plan) requesting approval of a change of control.

Please note that the Order is issued subject to and conditioned upon the Plan's full compliance with the Undertakings attached to the Order.

The Department's review of this Notice was limited to the information specifically described in the Exhibit E-1 and highlighted in the filed documents by strikeout, underline or other method in accordance with California Code of Regulations, Title 28, section 1300.52.¹

This Order does not constitute a waiver of any compliance issues that may be identified on subsequent review and analysis of the Plan's operations or documents as described in the Notice, whether or not highlighted to reflect a change, or of any other Plan documents or operations, whether or not disclosed in this Notice. This Order does not approve or waive any right or compliance issues that may be identified on subsequent review and analysis of this filing or any other related Plan documents, filings, or operations, whether or not disclosed herein. Further this Order does not approve or

¹ California Health and Safety Code sections 1340 et seq. (Act). References herein to "Section" are to sections of the Act. References to "Rule" refer to the California Code of Regulations, title 28.

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waive any right or compliance issues that may be identified in any current open plan filing.

The revisions necessary to correct compliance concerns identified by the Department in this Notice apply to all Plan documents that contain similar language or provisions. Plan documents and operations that do not reflect compliance with the Act and Rules in accordance with the Department's determinations regarding this Notice are not approved. Accordingly, review and revise all Plan documents to correct similar compliance concerns; if these are the only changes made to existing variations of the same or similar documents, the Plan need not file those revised documents as an Amendment. The Department reserves the right to require additional revisions to Plan documents and operations as necessary to ensure compliance with the Act.

Please contact me at 916-445-4998 or Steven.Coskie@dmhc.ca.gov if you have any questions or concerns.

Sincerely,



Steven Coskie
Attorney III
Office of Plan Licensing

cc: Jenny Mae Phillips, Deputy Director, Office of Plan Licensing
Rathna Pai, Acting Assistant Chief Counsel, Office of Plan Licensing
Phuc Nguyen, Assistant Chief Counsel, Office of Plan Licensing

UNDERTAKINGS

MPT Picasso Investors TRS, LLC, a Delaware limited liability company acquired a 49% equity interest ("Minority Interest") in Prospect Health Plan, Inc.'s ("Plan") parent company, PHP Holdings, LLC. The Plan has filed with the Department a Notice of Material Modification (Filing No. 20232846) regarding the Minority Interest transaction.

To demonstrate continued compliance with the Knox-Keene Health Care Service Plan Act of 1975, California Health and Safety Code section 1340 et seq. (the "Act") and the Act's corresponding regulations at Title 28, California Code of Regulations (the "Rules"), following entities (collectively, the "Parties") agree to the Undertakings set forth herein and acknowledge that any Orders issued by the Department approving Filing Number 20232846 are conditioned upon these Undertakings:

- Chamber, Inc. (Ultimate Parent)
- MPT Picasso Investor TRS, LLC
- PHP Holdings, LLC (Parent)
- Prospect Health Plan, Inc.

By so doing, the Parties agree to fully and completely comply with these Undertakings and agree that it will not violate these Undertakings.

Financial and Filing Requirements

1. Change of Control

Plan will not merge, consolidate, or enter into a single or series of transactions resulting in its purchase, acquisition, or control by, any entity, including another health care service plan or a health insurer licensed under the Insurance Code, without first submitting a Pre-Filing Request Form (DMHC 10-195) and attending a Pre-Filing conference with the Department. After the Pre-Filing conference, the DMHC will determine whether the proposed transaction(s) require the Plan to file a Notice of Material Modification. This includes individual transactions which, when considered cumulatively with any other transactions within a three-year period, could impact ownership interest.

2. Equity Interest

Before MPT Picasso Investors TRS, LLC (MPTP) may take any additional equity interest in Plan or any of its affiliates, Plan will first file a Notice of Material Modification, in accordance with the standards set forth in Section 1352 of the Act and Rule 1300.52.4, requesting prior Department approval of MPTP taking additional equity interest in Plan or any of its affiliates and await an order from the

Department before transferring any equity interest from Plan or any of its affiliates to MPTP.

3. Phase II Transactions

Plan will not initiate the transactions described as the Phase II Transactions in Article IV of the Amended and Restated Master Restructuring Agreement filed in eFile No. 20232846, without first filing a Notice of Material Modification, and securing approval from the director. The Notice will detail the total cumulative aggregation of ownership interests that will occur from all phases of transactions. This includes not only the Phase II Transactions but also any other transactions that, when combined with Phase II and any potential future transactions, impact ownership interest.

4. Minimum Tangible Net Equity

The Plan is required to maintain 200% of tangible net equity (TNE) at all times. Further, the Plan shall not use Secured Affiliate Receivables to meet the TNE requirements.

5. Restrictions on Upstreaming of Funds

The Plan shall not declare or pay dividends, make other distributions of cash or property or in any other way upstream any funds or property to its shareholders or any of the Parties' affiliates (collectively, "Affiliate Company Distributions") if such actions would cause any of the following:

- (a) The Plan to fail to maintain, at all times, 200 percent of the minimum TNE (which annualized amount shall be calculated by multiplying the applicable current quarter revenues and expenditures by four) required by Rule 1300.76; or
- (b) Result in insufficient working capital or insufficient cash flow necessary to provide for the retirement of existing or proposed indebtedness of the Plan, as required by Rule 1300.75.1(a); or
- (c) Adversely affect the ability of the Plan to provide or arrange for health care services.

For the purposes of these Undertakings, "Affiliate Company Distributions" will not be deemed to refer to payments made under the terms of any administrative service agreement or tax sharing agreement that was filed with and received prior approval from the Department.

6. Prior Approval Before Guaranteeing, Cosigning or Assuming Loans, or Before Borrowing

The Plan and its affiliates shall not take any of the following actions prior to the submission of a Notice of Material Modification and the receipt of the Department's

Order or Approval of the Notice of Material Modification:

- (a) Allow the Plan to cosign or guarantee any portion of any current or future loans and/or credit facilities entered into by the Plan's shareholders, affiliates, or any of its affiliate shareholders.
- (b) Permit any portion of loans obtained by the Plan's shareholders, affiliates or any of its affiliate shareholders to be assumed by the Plan unless the Plan is currently a party to the existing loan.
- (c) Allow a pledge or hypothecation of the Plan's assets in any way connected with any current or future loans of the Plan's shareholders, its affiliates, or its affiliate shareholders.
- (d) Allow the Plan to borrow any funds or otherwise incur any indebtedness for the purpose of making any Affiliate Company Distribution, except (i) any Affiliate Company Distribution that is made in compliance with Undertaking 5 herein, or (ii) a payment made pursuant to any written administrative services agreement or tax sharing agreement between or among the Plan's shareholders, its affiliates, or its affiliate shareholder.

Notwithstanding the above, these undertakings do not supersede the Plan's requirement to file a Notice of Material Modification when required by Section 1352(b), Rule 1300.52.4(d), or as otherwise required by the Act or Rules.

7. *Notice of Undertakings to Creditors*

The Plan shall ensure that written disclosure of Undertakings 4, 5 and 6 is provided to any and all future holders of any loans and/or credit facilities of the Plan's affiliates, to the extent that Plan assets and/or stock are involved in such loans and/or credit facilities, to ensure that the holder of such instrument(s) has written notice that the satisfaction of any obligations under such instrument(s) is subordinated to the Plan's obligations under the Act and Rules thereunder.

8. *Outsourcing of Plan's Duties*

If the Plan intends to have duties, in whole or in part, performed by another entity, the Plan shall submit a filing to the Department in accordance with the standards set forth in Section 1352 and Rule 1300.52.

9. *Parent's Quarterly and Annual Audited Financial Statements*

Quarterly and annually, through eFiling, as Exhibit HH-32, within 45 days after the Plan's quarter end and 120 days after the Plan's fiscal year, the Plan shall submit the combined audited financial statements of its parent, PHP Holdings, LLC.

10. Books And Records to Stay in California Unless Approved by The Department

The Plan shall not remove, require, permit, or cause the removal of the Plan's books and records, as defined in the Act, from California before filing a Notice of Material Modification and receiving written approval from the Department, in accordance with Rule 1300.81 and the Act. Further, notwithstanding any failure or omission on the Plan's part to maintain the Plan's books and records that have been removed from California without the Department's express, written permission, this Undertaking shall not restrict the Plan from maintaining books and records in an electronic format, as long as electronic books and records are contemporaneously available in California.

The Plan shall make all records available to the Department Director, or the Department Director's delegate, at any time to ensure compliance with Department Rules and these Undertakings.

11. Changes to Administrative Service Agreements Must Be Filed as Material Modifications

Prior to the execution of any change, as defined below, to an administrative services agreement (ASA), the Plan shall file notice of the proposed change(s) with the Department in a Notice of Material Modification in accordance with the requirements of the Act and Rules. Neither the Plan, nor any affiliate, may implement such change(s) until after the Department has issued an Order of Approval for such change(s).

"Change" is defined for the purpose of these Undertakings to be an amendment, modification, termination, or replacement of an ASA, which involves any of the following:

- (a) The addition of new services, or a change in the scope of services;
- (b) Change to reimbursement terms or method for reimbursement for services performed on behalf of the Plan;
- (c) Change to the location of books and records documenting performance of the services performed on behalf of the Plan pursuant to an ASA, resulting in removal of the ASA provider's books and records outside of California;
- (d) Change to the location of performance of any of the functions that relate to the Plan's administrative capacity from California to another state or country, or from a state other than California to another state or country;
- (e) Change to the entity performing the Plan functions on behalf of the Plan pursuant to an ASA; or

- (f) The addition, modification, termination of any funding arrangement used to provide funding to the Plan in order to maintain compliance with the financial rules and regulations of the Act and Rules.

Notwithstanding the above, this Undertaking 11 does not supersede Plan's requirement to file a Notice of Material Modification when required by Section 1352(b), Rule 1300.52.4(d), or as otherwise required by the Act or Rules.

12. New Plan-To-Plan Agreement Must Be Filed as Material Modifications

The Plan will not execute any plan-to-plan agreements prior to submitting them to the Department for review in the form of a Notice of Material Modification.

Neither the Plan, nor its affiliates and/or shareholders, may implement such plan-to-plan agreements until after the Department has issued an Order of Approval for such agreements.

13. Notification of Plan-To-Plan Agreement Termination

The Plan agrees to notify the Department, at least 30 days prior to a termination of any plan-to-plan agreements, by submitting an Amendment filing through the Department's eFiling portal.

14. Payment Of Costs Associated with The Department's Surveys, Audits, Examinations, Or Inquiries

The Plan agrees to pay, within 15 business days from the receipt of billings from the Department, the actual costs arising from the activities of the Department, including any necessary out-of-state travel, incurred in the course of verifying and auditing compliance with the Act and each of the undertakings set forth herein. Such activities, including any of the routine and non-routine surveys, audits, examinations, investigations or inquiries required or permissible under the Act, will be conducted at the Department's discretion. The Department's activities to verify and audit the Plan's performance of these undertakings are not a survey, audit, or examination under Sections 1380 and 1382 and their implementing regulations.

15. Appointment of an Independent Third-Party Monitor

In the event the Plan fails to maintain at all times 100 percent of the minimum TNE required by Rule 1300.76 (TNE deficiency) and fails to remedy the TNE deficiency within 30 calendar days, an independent third-party monitor (Third-Party Monitor) shall be appointed to monitor the Plan's financials. The Third-Party Monitor shall periodically report to the Department the Plan's actions towards remedying the TNE deficiency. The Plan, in consultation with the Department, will select an appropriately qualified Third-Party Monitor. Upon the Department's approval, the Plan shall promptly appoint the Third-Party Monitor. The appointment shall cease when the Plan remedies the TNE deficiency and demonstrates to the Department that the Plan is financially stable. Termination of the Third-Party Monitor's appointment shall

require the Department's approval. The Plan shall be financially responsible for the Third-Party Monitor's costs and fees, including any cost and fees associated with the Third-Party Monitor's services. The Plan shall reimburse the Department for any reasonable costs incurred in verifying the Third-Party Monitor's qualifications.

16. Tax Sharing Agreements to be Filed as Material Modifications

After the closing date of the Acquisition, if the Parties desire to amend, change, terminate or replace its tax sharing agreements, as previously filed with and approved by the Department, the Plan shall file any changes to those tax sharing agreements as a Notice of a Material Modification in accordance with the standards set forth in Section 1352 and Rule 1300.52.4.

17. Changes in Enrollment of Greater Than 10%

The Plan shall inform the Department within five (5) business days of any changes (increase or decrease) to the Plan's enrollment in excess of 10% unless the Department has previously approved such change. Upon the Department's request, the Plan shall submit financial and enrollment projections and detailed assumptions to show the impact to the Plan as a result of the change in its enrollment.

General Undertakings

18. Reports to the Department

The Plan will submit an annual report to the Department by March 1 informing the Department of activities and compliance regarding these Undertakings during the preceding calendar year. These reports shall be organized by Undertaking and shall provide sufficient detail for the Department to determine whether the Parties are compliant with each Undertaking. The first report is due March 1, 2025.

19. Enforceability of Undertakings

The Undertakings set forth herein shall be enforceable to the fullest extent of the authority and power of the Director of the Department under the provisions of the Act, including all civil, criminal, and administrative remedies (such as Cease and Desist Orders, freezing enrollment, and assessment of fines and penalties). The Undertakings shall act as an Order of the Director.

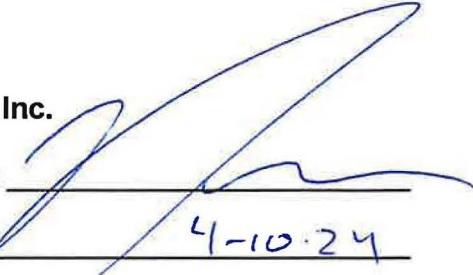
The Parties acknowledge that the Act's enforcement remedies are not exclusive and may be sought and employed in any combination deemed advisable by the Department to enforce these Undertakings.

20. Terms and Conditions of Undertakings

The Undertakings set forth herein shall be subject to the following terms and conditions:

- (a) **Binding Effect.** The Undertakings set forth herein shall be binding on the Parties and their respective successors and permitted assigns. If the Parties fail to fulfill their obligations to the Department as provided under the Undertakings set forth herein, the Parties stipulates and agree that the Department shall have the authority to enforce the provisions of these Undertakings in a California court of competent jurisdiction or an Office of Administrative Hearing.
- (b) **Governing Law.** The Undertakings set forth herein and their validity, enforcement, and interpretation, shall for all purposes be governed by and construed in accordance with the laws of the state of California.
- (c) **Venue.** The proper venue of any dispute arising from the Undertakings set forth herein shall be Sacramento, California.
- (d) **Invalidity.** In the event that any Undertakings or any portion of any Undertaking set forth herein shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, the validity or enforceability of any other Undertakings or any portion of any Undertaking shall not affect the validity or enforceability of any other Undertakings, and such other Undertakings shall remain in full force and effect and shall be enforceable to the maximum extent permitted by applicable law.
- (e) **Duration.** The Undertakings set forth herein shall become effective upon the effective date of the issuance of the Order of Approval for the Acquisition, and except as to those provisions of the Undertakings that contain separate termination provisions, shall remain in full force and effect until terminated by the Plan with the written consent of the Department.
- (f) **Third Party Rights.** Nothing in the Undertakings set forth herein is intended to provide any person other than the Parties and the Department, and their respective successors and permitted assigns, with any legal or equitable right or remedy with respect to any provision of any Undertaking set forth herein.
- (g) **Amendment.** The Undertakings set forth herein may be amended only by written agreement executed by the Parties and the Department.
- (h) **Assignment.** No Undertaking set forth herein may be assigned by the Parties in whole or in part, without the prior written consent of the Department.
- (i) **Specific Performance.** In the event of any breach of these Undertakings, the Parties acknowledge that the state of California would be irreparably harmed and could not be made whole by monetary damages. It is accordingly agreed that the Parties shall waive the defense in any action for specific performance that a remedy at law would be adequate, and the Department should be entitled to seek an injunction or injunctions to prevent breaches of the provisions of these Undertakings and to seek to specifically enforce the terms and provisions stated herein. The Department's right to seek an injunction does not supersede the remedies available to the Director.

Chamber, Inc.

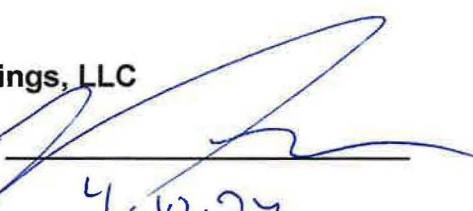
Signature: 

Date: 4-10-24

Print Name: Von Crockett

Print Title: SVP

PHP Holdings, LLC

Signature: 

Date: 4-10-24

Print Name: Von Crockett

Print Title: SVP, Prospect Healthcare Facilities Management, LLC, Manager of PHP Holdings, LLC

MPT Picasso Investor TRS, LLC

Signature: _____

Date: _____

Print Name: R. Steven Hamner

Print Title: Executive Vice President and CFO

Prospect Health Plan, Inc.

Signature: _____

Date: _____

Print Name: Mitchell Lew, MD

Print Title: CEO

Chamber, Inc.

Signature: _____

Date: _____

Print Name: Von Crockett

Print Title: SVP

PHP Holdings, LLC

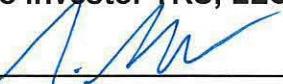
Signature: _____

Date: _____

Print Name: Von Crockett

Print Title: SVP, Prospect Healthcare Facilities Management, LLC, Manager of PHP Holdings, LLC

MPT Picasso Investor TRS, LLC

Signature: 

Date: April 10, 2024

Print Name: R. Steven Hamner

Print Title: Executive Vice President and CFO

Prospect Health Plan, Inc.

Signature: _____

Date: _____

Print Name: Mitchell Lew, MD

Print Title: CEO

Chamber, Inc.

Signature: _____

Date: _____

Print Name: Von Crockett

Print Title: SVP

PHP Holdings, LLC

Signature: _____

Date: _____

Print Name: Von Crockett

Print Title: SVP, Prospect Healthcare Facilities Management, LLC, Manager of PHP Holdings, LLC

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Signature: _____

Date: _____

Print Name: Mitchell Lew, MD

Print Title: CEO